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SUBJECT: INVESTMENT WORKING GROUP REVIEWS PAST ISSUES, SETS FUTURE
AGENDA

SENSITIVE BUT UNCLASSIFIED - PROTECT ACCORDINGLY

¶1. (U) SUMMARY: The U.S.-Japan Investment Working Group (IWG), a joint undertaking of the bilateral Investment Initiative, held its semi-annual meeting on October 31 via digital video-conference. After a review of ongoing investment-related concerns on both sides, most prominently, the final implementation of triangular merger regulations in Japan, the two sides agreed to a future program of work that includes a review of investment chapters in trade agreements and model investment treaties and a regional exchange of "best practices" of local and region governments in promoting investment. END SUMMARY

¶2. (U) The bilateral IWG, co-chaired by U.S. Ambassador for APEC Michael Michalak and Ministry of Economy, Trade and Industry (METI) Director-General for Multilateral Trade Systems Tsunehiro Ogawa, held its semi-annual meeting via digital video-conference on October 31 (October 30 Washington time.) The full list of participants in both Tokyo and Washington appears in paragraphs 17-18. Ogawa, who was co-chairing the IWG for the first time, praised the past work of the Initiative in creating a "deeper understanding of the importance of foreign direct investment and the investment environment in our two countries." Japan has benefited from this initiative, he said, not least through a doubling of the country's stock of FDI in the past five years but also from the various joint investment promotion activities under the Initiative. In his opening remarks, Ambassador Michalak praised the concrete cooperative programs of the Initiative, including recent investment promotion seminars in Sendai and Yokohama and a forthcoming program in Santa Clara, California. Michalak opined that at this five-year anniversary of the Initiative and in light of ongoing discussions at the sub-cabinet level on how to renew the bilateral economic relationship, this was the appropriate time for the IWG to review its current work and set a medium-term agenda for future activities.

Review of U.S. Concerns: Triangular Mergers

¶3. (SBU) Ambassador Michalak expressed U.S. concerns about recent media reports that the Japan Business Federation (Keidanren) planned to formally oppose draft Ministry of Justice (MOJ) rules that would allow foreign companies to undertake triangular mergers in Japan. This liberalization of Japan's M&A regime was included in the 2005 Company Law but the GOJ delayed final implementation until May 2007. Ambassador Michalak requested an update on the status of the new draft regulations. MOJ's Senior Attorney explained the Ministry was

following the wide range of public discussion on this issue as well as awaiting possible future discussions within the ruling Liberal Democratic Party. Once those discussions were complete, he said, the ministry would review the existing draft but he would not say whether any changes might be necessary. He assured the U.S. that MOJ had no particular conclusions in mind at this point in time.

14. (SBU) METI's Director of the Industrial Organizations Division addressed the issue more directly. He affirmed that METI believed its interpretation of the Company Law was the same as MOJ, namely that, under the spirit of the law, only a general shareholders' meeting "special resolution" (tokubetsu ketsugi) should be required for corporate reorganization or M&A activity such as triangular mergers. Keidanren's desire for a more stringent condition - an extraordinary resolution (tokushu ketsugi) - was unreasonable. "If we implement the law as written, we do not need to add any onerous conditions (for triangular mergers)," he added. MOJ's attorney again noted that the final form of the implementing regulations "depended upon the discussion going forward." After listening to those discussions, MOJ would decide if a review was necessary but "can not exclude the possibility that the result would be in line with Keidanren's position," he concluded. METI's Director reported further that METI Minister Amari met with Keidanren Chairman Mitarai a day earlier (October 30.) At that time, Amari told Keidanren that it was particularly important to consider the triangular merger issue in light of the "international environment" and "in particular, to take heed of the government's stated policy of seeking to encourage inward FDI." In view of that, Amari told Keidanren that METI could not support the Federation's position.

15. (SBU) Ambassador Michalak repeated the U.S. view of the importance of an open M&A regime for promoting FDI. For that reason, implementing the triangular merger regulations on schedule was an important sign of Japan's ongoing commitment to improving its

TOKYO 00006584 002 OF 006

investment climate. Since the government had already delayed implementation of the triangular merger provision one year to allow companies to implement defensive measures, Michalak asked whether METI or the Tokyo Stock Exchange had undertaken a study of the effects of new defensive measures on the M&A environment. METI Industrial Organizations Director noted that METI had sponsored a study group in 2005, which drafted model guidelines for defensive measures. Since then, 160 companies (or about 5% of all Japanese listed companies) had implemented such measures. METI's Director agreed with Ambassador Michalak's observation that one year should be sufficient to allow companies to implement defensive measures. In response to a final question on the status of amendments to the tax law that would provide tax deferral for stock swaps and other non-cash transactions, METI noted that it was coordinating with Ministry of Finance (MOF) on this proposal. (Note: Subsequent to the DVC, MOF officials met informally with U.S. business representatives to discuss the details of the tax deferral proposals. End note.)

Review of U.S. Concerns: Educational Services

16. (SBU) Ambassador Michalak thanked the Ministry of Education, Culture, Sports, Science and Technology (MEXT) for its recent designation of a fourth U.S. institution (Columbia University Teachers College) as a Foreign University Japan Campus. (FUJC). He asked for an update on MEXT's discussion with Temple University (TUJ) on its taxation concerns. MEXT's Deputy-Director of the Higher Education Policy Planning Division said MEXT officials had met with TUJ on October 4 to explain the various requirements under Japanese law and regulations for designation as a Japanese university. TUJ had expressed interest in continuing the discussions and MEXT hoped it would be able "to provide appropriate answers." MEXT also promised to inform the Embassy of whether there would be a public comment period for proposed regulations that would loosen requirements on institutions of higher education to own land and buildings. Subsequent to the DVC, MEXT informed the Embassy that it had already determined to implement nation-wide the provisions of the special deregulation zone ("tokku") that would liberalize ownership requirements. Nation-wide implementation and application procedures for approval of the establishment of

universities under the new rules could begin in FY2007 (April 2007.)

MEXT is working on a detailed study of the implementing regulations for this new proposal and planned to ask for public comments. When the results of the public comments are available, MEXT will inform the Embassy.

Review of U.S. Concerns: Labor Mobility

17. (SBU) Ministry of Health, Labor and Welfare (MHLW) Assistant Director of International Affairs told the IWG that the Ministry was undertaking a five year review of the defined contribution pension schemes as called for in the 2001 law authorizing such schemes. The review would verify how companies are implementing these programs. As part of that study, MHLW had received requests from companies to raise the contribution ceilings and it would study that input before making a final decision. On the issue of allowing monetary settlements in disputed dismissals, the Chief of the Inspection Division of the Labor Standards Bureau said the Labor Affairs Council was now deliberating on possible revision of the Labor Standards Law and Labor Contracts Law. Currently, in Japan only one provision of the Labor Standards Law (Article 18.2) deals with dismissals. Most of the legal framework in this area rests on case law and precedents from local and Supreme Court rulings. The Council is now studying the precedents to determine what might be included in the revised law. The guiding principle is that the amended rules should encourage early resolution of any problems and meet the concerns of both employers and workers.

18. (SBU) On the issue of the white-collar exemption, MHLW was less responsive. Japan's labor situation differed from the U.S.' system and it was difficult, therefore, to introduce such a scheme. Nevertheless, he explained, the Council was aware of the "increasing diversity of Japan's white-collar sector" and the Council was looking for ways to reform the system to "enable white collar workers to better use their skills and talents to the maximum extent possible." On the worker dispatch law, the Chief of the Private Employment Service Division of the Employment and Security Bureau said the government had undertaken a substantial review of the worker dispatch law in 2003. At that time, the government extended

TOKYO 00006584 003 OF 006

the allowed dispatch period for 26 categories of workers from one to three years. This reflected the need for increased flexibility in the labor market required by both employers and workers. Since then, the government had received additional demands from employers to eliminate all limits on dispatch periods. Labor representatives, however, opposed this proposal, insisting that companies that wished to employ workers for a longer period should hire them as full time workers. With such a large gap between the two sides the government did not plan further changes to the dispatch rules.

19. (SBU) In response to a U.S. request for a briefing on the government's "second chance" programs (a top priority of the new Abe Cabinet), METI explained that a number of GOJ ministries were working on these proposals under the guidance of a Cabinet Office task force. They were reviewing a multitude of issues including measures that would address the problems of the unemployed, young persons unable to find full-time employment ("freeters"), as well as businessmen whose companies had failed and who were trying to start new ones. METI hoped to arrange a detailed briefing on the government's proposals at a later date.

Review of Japanese Concerns: Visas

110. (SBU) Noting that timely issuance of visas is essential to efficient business operations, METI reiterated its ongoing concerns about renewals of U.S. visas and again requested the U.S. to consider increasing the number of visa-issuing posts in Japan, in particular, adding Fukuoka and Nagoya. A representative of the Second North American Division of the Ministry of Foreign Affairs (MOFA) noted that, in the June 2006 Regulatory Reform report, the U.S. had said it was studying the possibility of resuming domestic visa renewals and asked for an update on that study. METI also requested an update on plans to increase the number of posts in

countries near the U.S. that could renew E-visas and the possibility of revising visa validity periods.

¶11. (SBU) Ambassador Michalak responded by noting the success of the program to accept visa applications in Sapporo that began in April 2006. At present, he noted, there were no plans to extend that program to Fukuoka in light of the "significant physical limitations" and workload constraints at that post. Nagoya on the other hand had never been intended as a visa issuing post. So there were no current plans to extend the number of visa issuing posts in Japan. However, as new technology becomes available, the U.S. will re-evaluate the situation. The U.S. was deeply interested in exploring ways to use technology to enhance security and facilitate visa issuance. Through discussions between Secretary Rice and Foreign Minister Aso and between Homeland Security Secretary Chertoff and Aso, our two countries had discussed the visa issue at the highest levels. At the same time, we continue to have regular working level discussion on visa issues. On the question of visa validity, Ambassador Michalak noted that this needed to be discussed on a reciprocal basis between consular representatives. He promised to pass Japan's proposal to U.S. consular officials and, if Japanese consular counterparts were interested, perhaps expert discussions could be held.

¶12. (SBU) On the issue of domestic and third country renewals, the U.S. "remains committed to making E-visa renewals for qualified Japanese applicants as convenient as possible." In an effort to address this issue, State Department's Consular Bureau met internally in May 2006, with the participation of visa officials from Embassy Tokyo and Consulate General Osaka. The U.S. is continuing to work on a mechanism to share E-visa information between posts. There was, however, no new information to report and no plans to resume renewals of visa in the United States. METI concluded the discussion by reaffirming the importance of this issue to Japan and expressing the wish to see greater efficiencies in the visa issuance process. Japan was willing to do whatever possible to help the U.S obtain additional resources to address this issue. The Japanese side also asked to be "educated in detail" through other channels as to why visa renewal in the U.S. was not possible.

Review of Japanese Concerns: Secure Trade

¶13. (SBU) METI's Americas Desk Director opened the discussion by distributing a diagram that he had prepared for the sub-cabinet meeting the week before entitled "Supply Chain and Security

TOKYO 00006584 004 OF 006

Measures." In examining the issue of secure trade, he said, the entire chain "must be put on the radar screen" and borne in mind as either side considered or implemented new programs in this area. The Japan side continued to have concerns about DHS' "24-hour rule" which, he claimed, had increased shipping lead times by up to two days. Shipping lead-time was something that Japanese business had worked very hard in recent years to reduce. Citing industry figures, he claimed that the 24-hour rule has resulted in increased inventory levels of USD 300 million in bilateral trade and USD 3 billion worldwide. Between Japan and the U.S., Japan wished to ensure security while maintaining efficiency. It also sought to ensure the integrity and harmonization of secure trade programs worldwide. Finally, Japan believed the U.S. and Japan, as two of the world's leading trading nations, must take the initiative to improve secure trade standards throughout the world. As Japan had previously noted in the sub-cabinet meetings, this was not a request but a proposal on which the U.S. and Japan could work together. Ambassador Michalak strongly agreed and noted that this forum may not be the best place to take up the issues in detail. The two sides should raise this within the general framework of broadening U.S.-Japan relations; if issues were identified that would be appropriate for this group, then we could discuss details at a future time.

Review of Japanese Concerns: Exon-Florio

¶14. (SBU) At Japan's request, the Bureau of Economic and Business

Affairs Office of Investment Affairs (OIA) provided a brief summary of the progress of Congressional consideration of amendments to the Exon-Florio law. The U.S. remains committed to maintaining an open investment policy while managing a process to identify and address possible threats to national security. The administration supports amendment of the Exon-Florio law to reflect the post 9/11 security environment. On July 26, the House of Representatives, with administration support, passed a bill to amend the CFIUS process. The Senate passed a similar bill the following day. However, neither side has appointed conferees to reconcile the drafts and the Administration did not expect Congress would take up this legislation in the post-election "lame-duck" session.

¶15. (SBU) The Administration has enunciated to Congress several principles it believed should guide Congress' deliberations. These include integration of national security concerns in a post-9/11 environment, continuing to welcome FDI, and keeping what is working well in the law while making improvement and maintaining the integrity of the decision-making process. In addition, the Administration has committed to working to preserve the professionalism and independence of the process, strengthen the scrutiny of cases involving state-owned enterprises and increasing transparency to Congress. OIA noted that the Treasury Department maintains a website which explains the CFIUS process, and both Treasury and OIA work closely with companies involved in the process to understand their concerns and address them. In conclusion, the Japanese side asked the U.S. to keep it informed as the reform process continues.

Future Program of Work

¶16. (SBU) The two sides agreed to take up the following items in a future program of work:

- Continue discussion of existing agenda items.
- Subject to further discussion, begin an examination of investment chapters in existing bilateral Free Trade and Economic Partnership agreements and model bilateral investment Treaties with a view to identifying best practices and what might be gained by adopting them for future bilateral and/or regional agreements. Japan proposed that within a short period of time, perhaps by the end of the year, an expert group from both sides could begin to gather material for this research. The two sides could then intersessionally coordinate on how best to proceed and make recommendations at the next working group meeting.
- Promote an exchange of best practices among State, Prefectural and Local governments on how to promote investment at local levels.
- Sponsor a "Lessons-Learned" Briefing from the Industrial

TOKYO 00006584 005 OF 006

Reconstruction Corporation of Japan on how outside investors can promote investment and economic and corporate governance reform.

- Seek direction from the sub-cabinet level on how to proceed in the area of secure trade and whether to continue discussions in this forum or in a new forum under the sub-cabinet process.

Video-conference Participants

¶17. (U) IN TOKYO:

JAPANESE SIDE:

MINISTRY OF ECONOMY, TRADE AND INDUSTRY

Co-Chair:

Tsunehiro Ogawa, Director-General, Multilateral Trade System

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Department, Trade Policy Bureau

Noriyuki Mita, Director, Americas Division, Trade Policy Bureau

Takeo Ijuin, Deputy-Director, Americas Division, Trade Policy Bureau

Teppei Uemura, Section Chief, Americas Division, Trade Policy Bureau

Keiichi Kawakami, Director, Trade and Investment Facilitation Division, Trade and Economic Cooperation Bureau

Hiroyuki Kago, Chief, Trade and Investment Facilitation Division

Mitsutoshi Okabe, Chief, Trade and Investment Facilitation Division

Emi Numata, Chief, Trade and Investment Facilitation Division

Kenji Goto, Director, Industrial Organization Division, Economic and Industrial Policy Bureau

MINISTRY OF FOREIGN AFFAIRS

Junichi Takahashi, Official, Second North America Division, North American Affairs Bureau

Hidenari Inamoto, Researcher, Economic Policy Division, Economic Affairs Bureau

MINISTRY OF JUSTICE

Shin Matsumoto, Attorney, Civil Affairs Bureau

Tsuyoshi Shimizu, Attorney, Civil Affairs Bureau

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MINISTRY OF EDUCATION, CULTURE, SPORTS, SCIENCE AND TECHNOLOGY

Kazuhiro Kotani, Deputy-Director, Higher Education Policy Planning Division, Higher Education Bureau

Ryoei Chijiiwa, Unit Chief, Office for international Planning, Higher Education Policy Planning Division, Higher Education Bureau

Masaki Uemura, Unit Chief, Office of Director General for International Affairs

MINISTRY OF HEALTH, LABOR AND WELFARE

Atsushi Kawai, Chief, Inspection Division, Labor Standards Bureau

Chiaki Miyazaki, Chief, Corporate Pension and National Pension Fund Division, Pension Bureau

Kosaku Sano, Chief, Private Employment Service Division, Employment and Security Bureau

Yoshihiko Sano, Assistant Director, International Affairs Division, Minister's Secretariat

U.S. SIDE:

TOKYO 00006584 006 OF 006

Daniel Fantozzi, Economic Counselor, U.S. Embassy Tokyo

David DiGiovanna, First Secretary, Economic Section, U.S. Embassy Tokyo

Michael Garrote, Consul, U.S. Embassy Tokyo

Michael R. Cox, Attach and Department of Homeland Security Senior Representative. U.S. Embassy Tokyo

Marc Dillard, First Secretary, Economic Section
U.S. Embassy Tokyo

Mateo Ayala, Deputy Financial Attach, U.S. Embassy Tokyo

Satoshi Hattori, Economic Specialist, U.S. Embassy Tokyo

¶18. (U) IN WASHINGTON:

U.S. SIDE

Co-Chair:

Ambassador Michael Michalak U.S. Ambassador for APEC, U. S.
Department of State

Ann Kambara, Deputy Director, Office of Investment Affairs, U.S.
Department of State

Jessica Webster, Chief, Economic Unit, Office of Japanese Affairs,
Department of State

Robert Winship, Economic Officer, Office of Japanese Affairs, U.S.
Department of State

Ronald Meyers, Director, Japan Affairs, Office of the U.S. Trade
Representative

JAPANESE SIDE

Atsushi Taketani, First Secretary, Embassy of Japan

Keiji Hattori, First Secretary, Embassy of Japan

¶19. (U) Ambassador Michalak has cleared this cable.

DONOVAN